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HOUSE BILL 214

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

FRANK BIRD

AN ACT

RELATING TO THE MORTGAGE FINANCE AUTHORITY; REPEALING THE
MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-18-4 NMSA 1978 (being Laws 1975,
Chapter 303, Section 4, as amended) is amended to read:

"58-18-4. AUTHORITY CREATED. --

A. There is created a public body politic and
corporate, separate and apart from the state, constituting a
governmental instrumentality, to be known as the "New Mexico
mortgage finance authority", for the performance of essential
public functions. The authority shall be composed of seven
members. The director of the financial institutions division of
the regulation and licensing department, state treasurer and
attorney general shall be ex-officio members of the authority

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1 with voting privileges. The governor, with the advice and
2 consent of the senate, shall appoint the other four members of
3 the authority, who shall be residents of the state and shall not
4 hold other public office. The four members of the authority
5 appointed by the governor shall be appointed for terms of four
6 years or less staggered so that the term of one member expires
7 on January 1 of each year. Vacancies shall be filled by the
8 governor for the remainder of the unexpired term. Any member of
9 the authority shall be eligible for reappointment. Each member
10 of the authority appointed by the governor may be removed by the
11 governor for misfeasance, malfeasance or willful neglect of duty
12 after reasonable notice and a public hearing, unless the notice
13 and hearing are, in writing, expressly waived. Each member of
14 the authority appointed by the governor, before entering upon
15 his duty, shall take an oath of office to administer the duties
16 of his office faithfully and impartially, and a record of the
17 oath shall be filed in the office of the secretary of state.
18 The governor shall designate a member of the authority to serve
19 as chairman for a term which shall be coterminous with his then
20 current term as a member of the authority. The authority shall
21 annually elect one of its members as vice chairman. The
22 authority shall also elect or appoint and prescribe the duties
23 of [such] other officers, who need not be members, [as] the
24 authority deems necessary or advisable, including an executive
25 director and a secretary, who may be the same person, and the

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1 authority shall fix the compensation of officers. Officers and
2 employees of the authority are not subject to the Personnel Act.
3 The authority may delegate to one or more of its members,
4 officers, employees or agents such powers and duties as it [~~may~~
5 ~~deem~~] deems proper.

6 B. All members, officers, employees or agents
7 exercising any voting power or discretionary authority shall be
8 required to have a fiduciary bond in the amount of one million
9 dollars (\$1,000,000) for the faithful performance of their
10 duties, the cost of which shall be proper expense of the
11 authority.

12 C. The executive director shall administer, manage
13 and direct the affairs and business of the authority, subject to
14 the policies, control and direction of the members of the
15 authority. The secretary of the authority shall keep a record
16 of the proceedings of the authority and shall be custodian of
17 all books, documents and papers filed with the authority, the
18 minute book or journal of the authority and its official seal.
19 He shall have authority to cause copies to be made of all
20 minutes and other records and documents of the authority and to
21 give certificates under the official seal of the authority to
22 the effect that the copies are true copies and all persons
23 dealing with the authority may rely upon the certificates.

24 D. Meetings of the authority shall be held at the
25 call of the chairman or whenever three members so request in

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1 writing. A majority of members then in office shall constitute
2 a quorum for the transaction of any business and for the
3 exercise of any power or function of the authority. No vacancy
4 in the membership of the authority shall impair the rights of a
5 quorum to exercise all the rights and to perform all the duties
6 of the authority. An ex-officio member from time to time may
7 designate in writing another person to attend meetings of the
8 authority and, to the same extent and with the same effect, act
9 in his stead.

10 E. The authority is not created or organized, and
11 its operations shall not be conducted, for the purpose of making
12 a profit. No part of the revenues or assets of the authority
13 shall inure to the benefit of or be distributable to its members
14 or officers or other private persons. The members of the
15 authority shall receive no compensation for their services, but
16 the members of the authority, its officers and employees shall
17 be paid allowed expenses if approved by the authority in
18 accordance with policies adopted by the authority [~~and approved~~
19 ~~by the Mortgage Finance Authority Act oversight committee~~].

20 F. The authority shall be separate and apart from
21 the state and shall not be subject to the supervision or control
22 of any board, bureau, department or agency of the state except
23 as specifically provided in the Mortgage Finance Authority Act.
24 In order to effectuate the separation of the state from the
25 authority, no use of the terms "state agency" or

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1 "instrumentality" in any other law of the state shall be deemed
2 to refer to the authority unless the authority is specifically
3 referred to therein. "

4 Section 2. Section 58-18-5 NMSA 1978 (being Laws 1975,
5 Chapter 303, Section 5, as amended) is amended to read:

6 "58-18-5. POWERS OF THE AUTHORITY. --The authority shall
7 have all the powers necessary or convenient to carry out and
8 effectuate the purposes and provisions of the Mortgage Finance
9 Authority Act, including but without limiting the generality of
10 the foregoing, the power:

11 A. to sue and be sued;

12 B. to have a seal and alter it at pleasure;

13 C. to make and alter bylaws for its organization and
14 internal management;

15 D. to appoint other officers, agents and employees,
16 prescribe their duties and qualifications and fix their
17 compensation;

18 E. to acquire, hold, improve, mortgage, lease and
19 dispose of real and personal property for its public purposes;

20 F. subject to the provisions of Section 58-18-6 NMSA
21 1978, to make loans, and contract to make loans, to mortgage
22 lenders;

23 G. subject to the provisions of Section 58-18-7 NMSA
24 1978, to purchase, and contract to purchase, mortgage loans from
25 mortgage lenders;

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1 H. to procure or require the procurement of a policy
2 of group or individual life insurance or disability insurance or
3 both to insure repayment of mortgage loans in event of the death
4 or disability of the borrower and to pay any premiums [~~therefor~~]
5 for the policy;

6 I. to procure insurance against any loss in
7 connection with its operations, including without limitation the
8 repayment of any mortgage loan, in [~~such~~] amounts and from
9 [~~such~~] insurers, including the federal government, [~~as it may~~
10 ~~deem~~] that the authority deems necessary or desirable; to
11 procure liability insurance covering its members, officers and
12 employees for acts performed within the scope of their authority
13 as members, officers or employees; and to pay any premiums
14 [~~therefor~~] for insurance procured;

15 J. subject to any agreement with bondholders or
16 noteholders:

17 (1) to renegotiate any mortgage loan or any
18 loan to a mortgage lender in default;

19 (2) to waive any default or consent to the
20 modification of the terms of any mortgage loan or any loan to a
21 mortgage lender and otherwise exercise all powers with respect
22 to its mortgage loans and loans to mortgage lenders that any
23 private creditor may exercise under applicable law; and

24 (3) to commence, prosecute and enforce a
25 judgment in any action or proceeding, including without

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1 limitation a foreclosure proceeding, to protect or enforce any
2 right conferred upon it by law, mortgage loan agreement,
3 contract or other agreement; and in connection with any such
4 proceeding, to bid for and purchase the property or acquire or
5 take possession of it and, in such event, complete, administer,
6 pay the principal of and interest on any obligations incurred in
7 connection with the property and operate or dispose of and
8 otherwise deal with the property in such manner as the authority
9 may deem advisable to protect its interests therein;

10 K. to make and execute contracts for the
11 administration, servicing or collection of any mortgage loan and
12 pay the reasonable value of services rendered to the authority
13 pursuant to such contracts;

14 L. to fix, revise from time to time, charge and
15 collect fees and other charges in connection with the making of
16 mortgage loans, the purchasing of mortgage loans and any other
17 services rendered by the authority;

18 M. subject to any agreement with bondholders or
19 noteholders, to sell any mortgage loans at public or private
20 sale at such prices and on such terms as the authority shall
21 determine;

22 N. to borrow money and to issue bonds and notes that
23 may be negotiable and to provide for the rights of the holders
24 thereof;

25 O. to arrange for guarantees or other security,

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1 liquidity or credit enhancements in connection with its bonds,
2 notes or other obligations by the federal government or by any
3 private insurer or other provider and to pay any premiums
4 therefor;

5 P. subject to any agreement with bondholders or
6 noteholders, to invest money of the authority not required for
7 immediate use, including proceeds from the sale of any bonds or
8 notes:

9 (1) in obligations of any municipality or the
10 state or the United States of America;

11 (2) in obligations the principal and interest
12 of which are guaranteed by the state or the United States of
13 America;

14 (3) in obligations of any corporation wholly
15 owned by the United States of America;

16 (4) in obligations of any corporation sponsored
17 by the United States of America that are or may become eligible
18 as collateral for advances to member banks as determined by the
19 board of governors of the federal reserve system;

20 (5) in certificates of deposit or time deposits
21 in banks qualified to do business in New Mexico, secured in the
22 manner, if any, as the authority shall determine;

23 (6) in contracts for the purchase and sale of
24 obligations of the types specified in this subsection; or

25 (7) as otherwise provided in any trust

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1 indenture or a resolution authorizing the issuance of the bonds
2 or notes;

3 Q. subject to any agreement with bondholders or
4 noteholders, to purchase bonds or notes of the authority at the
5 price as may be determined by the authority or to authorize
6 third persons to purchase bonds or notes of the authority; bonds
7 or notes so purchased shall be canceled or resold, as determined
8 by the authority;

9 R. to make surveys and to monitor on a continuing
10 basis the adequacy of the supply of:

11 (1) funds available in the private banking
12 system in the state for affordable residential mortgages; and

13 (2) adequate, safe and sanitary housing
14 available to persons of low or moderate income in the state and
15 various sections of the state;

16 S. to make and execute agreements, contracts and
17 other instruments necessary or convenient in the exercise of the
18 powers and functions of the authority under the Mortgage Finance
19 Authority Act;

20 T. to employ architects, engineers, attorneys (other
21 than and in addition to the attorney general of the state),
22 accountants, housing, construction and financial experts and
23 such other advisors, consultants and agents as may be necessary
24 in its judgment and to fix and pay their compensation;

25 U. to contract for and to accept any gifts or grants

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1 or loans of funds or property or financial or other aid in any
2 form from the federal government or from any other source and to
3 comply, subject to the provisions of the Mortgage Finance
4 Authority Act, with the terms and conditions thereof;

5 V. to maintain an office at such place in the state
6 as it may determine;

7 W. subject to any agreement with bondholders and
8 noteholders, to make, alter or repeal [~~subject to prior approval~~
9 ~~by the Mortgage Finance Authority Act oversight committee,~~
10 ~~hereby created, to be composed of four members appointed by the~~
11 ~~president pro tempore of the senate and four members appointed~~
12 ~~by the speaker of the house of representatives]~~ such rules and
13 regulations with respect to its operations, properties and
14 facilities as are necessary to carry out its functions and
15 duties in the administration of the Mortgage Finance Authority
16 Act;

17 X. to make, purchase, guarantee, service and
18 administer mortgage loans for residential housing for the
19 purposes set forth in the Mortgage Finance Authority Act where
20 private banking channels and private enterprise, unaided, have
21 not, cannot or are unwilling to make, purchase, guarantee,
22 service or administer the loans; and

23 Y. to do any and all things necessary or convenient
24 to carry out its purposes and exercise the powers given and
25 granted in the Mortgage Finance Authority Act. "

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1 Section 3. Section 58-18-8 NMSA 1978 (being Laws 1975,
2 Chapter 303, Section 8, as amended) is amended to read:

3 "58-18-8. RULES AND REGULATIONS OF THE AUTHORITY. --

4 A. The authority shall adopt and may from time to
5 time modify or repeal [~~subject to prior approval by the Mortgage~~
6 ~~Finance Authority Act oversight committee~~] rules and
7 regulations:

8 (1) for determining income levels for the
9 classification of persons of low or moderate income, which may
10 vary between different areas in the state and in accordance with
11 the size of family unit; and

12 (2) for governing:

13 (a) the making of loans to mortgage
14 lenders; and

15 (b) the purchase of mortgage loans, to
16 implement the powers authorized and to achieve the purposes set
17 forth in the Mortgage Finance Authority Act.

18 B. The rules and regulations of the authority
19 relating to the making of loans to mortgage lenders pursuant to
20 Section 58-18-6 NMSA 1978 or the purchase of mortgage loans
21 pursuant to Section 58-18-7 NMSA 1978 shall provide at least for
22 the following:

23 (1) procedures for the submission by mortgage
24 lenders to the authority of:

25 (a) requests for loans; and

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1 (b) offers to sell mortgage loans;
2 (2) standards for allocating bond proceeds
3 among mortgage lenders requesting loans from or offering to sell
4 mortgage loans to the authority;

5 (3) standards for determining the principal
6 amount to be loaned to each mortgage lender and the interest
7 rate thereon;

8 (4) standards for determining the aggregate
9 principal amount of mortgage loans to be purchased from each
10 mortgage lender and the purchase price thereof;

11 (5) qualifications or characteristics of:

12 (a) residential housing; and

13 (b) the purchasers of residential housing
14 to be financed by new mortgage loans made in satisfaction of the
15 requirements of Subsection F of Section 58-18-6 NMSA 1978 or
16 Subsection B of Section 58-18-7 NMSA 1978, as the case may be;

17 (6) restrictions as to the interest rates to be
18 allowed on new mortgage loans and the return to be realized
19 therefrom by mortgage lenders;

20 (7) requirements as to commitments and
21 disbursements by mortgage lenders with respect to new mortgage
22 loans; and

23 (8) standards for mobile homes eligible for use
24 as security.

25 C. The rules and regulations of the authority shall

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1 also provide for:

2 (1) schedules of any fees and charges to be
3 imposed by the authority; and

4 (2) any other matters related to the duties and
5 the exercise of the powers of the authority under the Mortgage
6 Finance Authority Act. "

7 Section 4. Section 58-18-8.1 NMSA 1978 (being Laws 1982,
8 Chapter 86, Section 7, as amended) is amended to read:

9 "58-18-8.1. RULES AND REGULATIONS OF THE AUTHORITY--
10 MULTIPLE-FAMILY DWELLINGS OR TRANSITIONAL [~~AND~~] OR CONGREGATE
11 HOUSING FACILITIES.--Prior to financing a multiple-family
12 dwelling project or transitional or congregate housing facility,
13 the authority shall adopt [~~subject to prior approval by the~~
14 ~~Mortgage Finance Authority Act oversight committee~~] rules and
15 regulations governing the purchase of project mortgage loans and
16 the making of loans to finance project mortgage loans, which
17 shall provide at least for the following:

18 A. procedures for the submission by mortgage lenders
19 to the authority of:

20 (1) offers to sell project mortgage loans; or

21 (2) requests for loans;

22 B. standards for approving qualifications of
23 sponsors and mortgage lenders;

24 C. standards for determining minimum equity
25 requirements for sponsors and acceptable debt-to-equity ratios

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1 for sponsors;

2 D. methods for establishing uniform accounting
3 systems for sponsors;

4 E. standards for approving costs of such projects;
5 and

6 F. guidelines establishing reasonable geographic
7 allocation procedures for project mortgage loans."

8 Section 5. Section 58-18-8.2 NMSA 1978 (being Laws 1983,
9 Chapter 285, Section 3) is amended to read:

10 "58-18-8.2. RULES AND REGULATIONS OF THE AUTHORITY--
11 SECONDARY MARKET FACILITY.--Prior to establishing a secondary
12 market facility or issuing any pass-through security, the
13 authority shall adopt [~~subject to prior approval by the Mortgage
14 Finance Authority Act oversight committee~~] rules and regulations
15 governing the operations of the secondary market facility and
16 the issuance of pass-through securities, which shall provide for
17 the following, to the extent that the secondary market facility
18 proposes to engage in such activities:

19 A. procedures for submission by mortgage lenders to
20 the authority of offers to sell:

- 21 (1) mortgage loans;
22 (2) pass-through securities; or
23 (3) obligations secured by mortgage loans or
24 pledges of mortgage loan revenues;

25 B. standards for allocating available funds or

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1 guarantees among mortgage lenders through the secondary market
2 facility;

3 C. qualifications or conditions relating to the
4 reinvestment by mortgage lenders of the funds made available to
5 mortgage lenders by the secondary market facility; and

6 D. characteristics of pass-through securities to be
7 issued by the secondary market facility."

8 Section 6. Section 58-18-8.3 NMSA 1978 (being Laws 1984,
9 Chapter 62, Section 3, as amended) is amended to read:

10 "58-18-8.3. RULES AND REGULATIONS OF THE AUTHORITY--HOME
11 IMPROVEMENT LOAN PROGRAM --Prior to implementing the home
12 improvement loan program referred to in [~~Subsection B of~~]
13 Section 58-18-7.3 NMSA 1978, the authority shall adopt [~~subject~~
14 ~~to prior approval by the Mortgage Finance Authority Act~~
15 ~~oversight committee~~] rules and regulations governing the
16 purchase of home improvement loans or loans to mortgage lenders
17 to fund home improvement loans under the program, which shall
18 provide at least for the following:

19 A. procedures for submission by mortgage lenders to
20 the authority of offers to sell home improvement loans;

21 B. standards for approving qualifications of
22 mortgage lenders;

23 C. standards for allocating bond proceeds or other
24 authority funds among mortgage lenders offering to sell home
25 improvement loans to the authority and among mortgage lenders

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1 receiving loans from the authority to fund home improvement
2 loans;

3 D. qualifications or characteristics of:

4 (1) residential housing upon which a home
5 improvement loan may be made;

6 (2) the types of home improvements that may be
7 made with the proceeds of home improvement loans, except that
8 the authority shall not permit the proceeds to be used for
9 landscaping, lawn sprinkling systems, swimming pools, tennis
10 courts, saunas or other recreational facilities; and

11 (3) the persons of low or moderate income who
12 may apply for home improvement loans;

13 E. restrictions as to the interest rates to be
14 allowed on home improvement loans and the fees and other profit
15 to be realized by mortgage lenders; and

16 F. procedures for determining eligibility for any
17 subsidies to be provided to persons of low or moderate income."

18 Section 7. REPEAL. -- Sections 2-12-5 and 58-18-5.2 NMSA
19 1978 (being Laws 1981, Chapter 173, Sections 1 and 2, as
20 amended) are repealed.